THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.8483 OF 2002

DATED: 13-03-2007

Between:

Shetty Rajeshwar and others

.. Petitioners

and

The State of Andhra Pradesh represented by its Principal Secretary (I & CAD), Secretariat, Hyderabad and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.8483 OF 2002

ORDER:

This writ petition is filed seeking a mandamus to direct the respondents to initiate land acquisition proceedings in respect of the lands of the petitioners situated at Rajura village of Adilabad District and pay compensation for those lands.

It appears, the petitioners are owners of various extents of land situated in different survey numbers which are mentioned hereunder:

> "Sy.No.384/1, 398/A/1, 384/2, 398/A/2, 384/3, 384/4, 384/5, 398/A/5, 385/1, 385/2, 387/A, 387/AA, 388, 389/A/1, 390/1, 390/2, 394/1, 397/1, 397/2, 397/3, 398/6, 399/1, 399/2, 399/3, 389/AA1, 389/A/2, 400/1, 400/2, 402, 378/2, 389/2AA, 389/AA2 and 394/1 admeasuring Acs. 0-04 gts., Acs. 0-20 gts. along with well; Acs. 0-04 gts., Acs. 0-03 gts., Acs. 0-15 gts., Acs. 2-00 gts. along with well; Acs.1-25 gts., Acs.1-25 gts., Acs.1-24 gts., Acs.0-33 gts., Acs.1-04 gts., Acs.1-02 gts., Acs.1-07 gts., Acs.1-07 gts., Acs.1-07 gts., Acs.2-01 gts., Acs.0-26 gts., Acs.0-26 gts., Acs.0-27 gts., Acs.2-00 gts. along with well; Acs.2-37 gts. along with well, Acs.2-37 gts. along with well, Acs.2-36 gts. along with well, Acs.1-01 gts., Acs.1-01 gts., Acs.0-20 gts., Acs.1-00 gts., Acs.0-39 gts., Acs.0-24 gts., Acs.0-20 gts., Acs.0-20 gts. and Acs.2-01 gts. respectively, all admeasuring Acs.32-28 gts. in total, situated at Rajura village of Adilabad District."

According to the petitioners, their lands are patta lands and their names are recorded as pattedars in the revenue records, and title deeds and

pattadar passbooks have been issued in their names. There is no dispute either with regard to the title or possession of the said lands. While that being so, the respondents, with an intention to provide irrigation facilities to the agricultural lands, surveyed the entire village and chosen the location of the lands of the petitioners for construction of a tank. Accordingly, the respondents have taken possession of the petitioners' lands in March 2000 and finalized the plans for construction of tank. The respondents have entrusted the work to a Contractor and the said Contractor has completed the work, and water is being stored in the tank. The tank is named as Ooracheruvu. Due to the construction of the tank, the lands of the petitioners have been submerged and therefore they are not in a position to cultivate their lands. Initially, the petitioners have protested and objected for the construction of the tank by the Contractor on the ground that without paying any compensation, the Government cannot take over their lands for any purpose including construction of the tank. The officials attached to the office of the respondents 2 and 3 have informed that they have taken possession of the lands and sending proposals to initiate land acquisition proceedings. They have also stated that the Government has sanctioned the tank under a scheme and funds were also released, and if the tank is not constructed within the stipulated time, the funds would be lapsed. They promised to initiate land acquisition proceedings and pay the compensation. Since the petitioners have no other option, they accepted the assurances given by the respondents 2 and 3. Thus the work of the construction of the tank was completed and consequently the lands of the petitioners were submerged in the water. However, Government has granted compensation for the lands in Sy.No.386 belonging to one Narayan whose lands were submerged along with the lands of the petitioners. With the fond hope, the petitioners waited for a long time, but nothing fructified and several representations made by the petitioners went in vain. Hence, this writ petition.

The 2nd respondent, Executive Engineer, I & CAD Division No.5, Pochampad Project, Balkonda Mandal, Nizambad District filed a detailed counter-affidavit. It is asserted in the counter-affidavit that Ooracheruvu of

Rajura village is existing since last 50 years, which was constructed some decades ago during the period of erstwhile Nizam Government. Originally, the Executive Engineer, I.B. Division, Kaddam was looking after the maintenance of the tank and later, from the year 1983-84, the Executive Engineer, I.B. Division, Nirmal began to look after the same. Later, in the year 2003-04, the said duty was again entrusted to Executive Engineer, Division No.5, Sri Rama Sagar Project. The Deputy Executive Engineer, Sub-Division No.2 has inspected the site and reported that certain lands are coming under submergence in the bed side, but the matter relates to 50 years back and pattedars kept quiet for all these years. The total submergence area of the tank bed lands (shikkam) is approximately 125 acres. The pattedars/petitioners have not made any representation to the Department at any time for payment of compensation amount for all these 50 years, and this Court, in various Judgments, held that a writ petition of this nature is not maintainable after lapse of many years. The claim of the petitioners for payment of compensation amount after considerable period of 50 years is improper and unjust. The tank namely "Ooracheruvu" of Rajura Village is old one, constructed some decades ago during the period of erstwhile Nizam Government and, as per the office records, the tank was restored in the year 1972. During the year 1986, due to heavy rains, certain leakages developed abutting to the weir of the tank and to prevent the water leakage and to protect further damage to the weir of the tank, certain minor repairs have been taken up by Executive Engineer, I.B. Division, Nirmal. No fresh submergence of lands took place and hence the question of acquiring the lands of the petitioners does not arise. No assurance was given by the Department for payment of compensation as contended by the petitioners.

Heard both sides.

From the above, it is clear that as per the inspection of the Deputy Executive Engineer, Sub Division No.2, an extent of 125 acres is the submerging area of the tank bed lands. It is also clear that, for a long time, the tank was abandoned and was subsequently restored in the year 1972,

and some minor repairs have been taken up in the year 1986.

At this stage, learned counsel for the petitioners states that due to conversion of ooracheruvu as one of the feeder reservoir tank of Sri Ram Sagar Project, the lands of the petitioners are being submerged throughout the year. Otherwise, earlier the lands were being submerged during rainy season only and they were able to cultivate their lands during ruby seasons.

Be that as it may, since the fact of submergence of the lands of the petitioners and the title of the petitioners to their respective lands are not in dispute, the contention of the respondents that since ooracheruvu was constructed fifty years ago by the erstwhile Nizam Government, the petitioners cannot claim compensation, though their lands are being submerged into the tank, seems to be most unreasonable.

It may not be out of place to notice a Judgment rendered by the learned Subordinate Judge at Nirmal in O.P.No.31 of 1992 dated 10.12.1993, where under the Executive Engineer (ID), I.B.Division, Nirmal filed a requisition for acquisition of the lands in Sy.No.386 for the submergence under Ooracheruvu of Rajura village. Possession of the said lands was taken over in the year 1972 itself. Draft notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') was published in A.P. Gazette dated 25.08.1987 and draft declaration under Section 6 of the Act was published in the A.P.Gazette dated 06.10.1987. The Land Acquisition Officer conducted the enquiry and awarded compensation at the rate of Rs.4,000/- per acre together with all consequential benefits. The lands of the petitioners are also similarly situated and are located abutting the lands which were the subject matter of O.P.No.31 of 1992.

Under these circumstances, the respondents are directed to reconsider the matter by initiating land acquisition proceedings, after conducting a detail enquiry into the same. The whole exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs.

C.V. RAMULU, J

13-03-2007.

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